

Message

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Sent: 11/13/2020 1:10:18 PM
To: Muehling, Brian [Muehling.Brian@epa.gov]; Kasman, Mark [Kasman.Mark@epa.gov]; Finman, Hodayah [Finman.Hodayah@epa.gov]; Almodovar, Lisa [Almodovar.Lisa@epa.gov]; Ziegler, Rick [Ziegler.Rick@epa.gov]; Harrington, Glenn [harrington.glenn@epa.gov]
Subject: RE: readout from today's TEPAC meeting

Thanks Brian – this readout was very helpful. Thanks for noting where EPA interventions were ignored.

From: Muehling, Brian <Muehling.Brian@epa.gov>
Sent: Thursday, November 12, 2020 6:19 PM
To: Nishida, Jane <Nishida.Jane@epa.gov>; Kasman, Mark <Kasman.Mark@epa.gov>; Finman, Hodayah <Finman.Hodayah@epa.gov>; Almodovar, Lisa <Almodovar.Lisa@epa.gov>; Ziegler, Rick <Ziegler.Rick@epa.gov>; Harrington, Glenn <Harrington.Glenn@epa.gov>
Subject: readout from today's TEPAC meeting

On Nov. 12, 2020 USTR held its first meeting with the Trade and Environment Policy Advisory Committee (TEPAC) in perhaps the last 18 months. Kelly Milton ran much of the meeting because of Ambassador Nemelka's late arrival. Nemelka engaged TEPAC members openly once he arrived and said he was confident that his Biden administration replacement would take the same approach that he does in pressing for environment issues to be viewed and addressed from a trade perspective. EPA, State, NOAA, Interior and USDA/Forest Service each had one staff-level representative. We were neither introduced nor offered a chance to comment, even in response to matters directly relevant to our own agency. Of the dozen or so TEPAC members present, the most engaged were Glenn Prickett (TEPAC chair, The Nature Conservancy), Jim Tripp (Environmental Defense Fund), Danielle Kessler (International Fund for Animal Welfare), Richard Steinberg (UCLA School of Law and previously USTR OGC during the Uruguay Round era), and Eric Bilsky (Senior Attorney and Assistant General Counsel, Oceana).

Highlights from the meeting:

1. USMCA implementation:
 - a. Milton said the environmental attachés from EPA and USFWS will move to Mexico next month; NOAA's attaché still has not onboarded at USTR. When Danielle Kessler of IFAW asked how in-country staff from IFAW and other NGOs might feed information to the USMCA attachés, Nemelka welcomed this and asked Milton to follow up.
 - b. Richard Steinberg (UCLA law school) asked about border water infrastructure improvements and USMCA. Milton said that "EPA received \$300 million for this and it is not for USTR to report on this." USTR did not invite EPA to comment.
 - c. TEPAC members did not comment on any other EPA-relevant USMCA obligations, e.g. ozone-depleting substances or air quality, or on Canada.
 - d. Glenn Prickett (Nature Conservancy) asked how the IECME and other interagency entities are helping Mexico build its capacity to comply with USMCA environmental obligations. Milton said USTR is working closely with IECME partners but it is premature to offer specifics. Prickett stressed the distinction between capacity to implement and to monitor/enforce and pressed for a follow-up briefing that would include AID (noting that they are not active in IECME work so far). USTR committed to do so.
 - e. USTR welcomed calls for helping Mexico build its capacity to implement fisheries-related obligations in USMCA, e.g. by establishing a legal requirement to rebuild overfished stocks.
2. Negotiations with the UK and Kenya:

- a. Despite similar goals for a robust environment chapter, Milton said the US and UK differ greatly in their ability to address climate objectives in the FTA and their commitment to making the environmental obligations enforceable under the FTA. Joe Tripp (EDF) pressed for the US to show greater flexibility in how climate objectives might be included in the FTA. USTR said that 'finding a way forward that doesn't necessarily violate Congressional guidance in TPA will be quite challenging' and then noted that the UK is trying to develop compromise text that would not bind the US to pursue GHG emissions mitigation.
 - b. Nemelka emphasized the commercial and strategic objectives of a possible FTA with Kenya, said the environment chapter would not be an afterthought, and then said nothing more about the chapter except to protest the New York Times article on plastics waste and Kenya. He argued that the article wrongly asserted that USTR is working with industry entities to force Kenya to accept plastics waste for disposal. He said that USTR "knows the difference between recycling and final disposal" and that "it would be up to Kenya to decide whether it wants to support the domestic recycling of plastics scrap that may be traded internationally."
3. WTO fishing subsidies negotiations: this consumed much of the meeting. Notably, TEPAC members and USTR agreed on the need to seek strong WTO disciplines on subsidies that promote overfishing, as well as the need to target China's abuses. Nemelka said that "Unlike other WTO negotiations, we are maintaining a strong line on this topic regardless of the US administration." He also said the US and Ecuador soon will announce bilateral trade measures meant to control Chinese overfishing in and around the Galapagos Islands.